

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING #98-03**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Application of sales or use tax to motor vehicle demonstrators.

**SCOPE**

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

**FACTS**

XYZ, Inc. (hereinafter "the taxpayer") is a [LOCATION AND BUSINESS] distributor of motor vehicles. As part of its business operations, the taxpayer will operate and own various dealerships throughout the State of Tennessee. The taxpayer plans to introduce its product [INTO THE MARKET] through a free demonstration and test drive program (hereinafter the "test drive program"). The test drive program will not exceed one hundred twenty (120) days. As part of the test drive program, the taxpayer plans to [PROVIDE] a number of automobiles that will be offered to selected prospective customers (hereinafter "evaluators"). The evaluators will be allowed to test drive the vehicles with no obligation to lease or buy at the end of the test drive program. However, the evaluators will be responsible for excessive wear and tear, associated fuel costs, and damages not covered by insurance.

Throughout the test drive program, the taxpayer will retain title to the vehicles and register for sales tax purposes as a retail dealer under the dealership name and/or obtain dealer plates and provide appropriate insurance on each vehicle. Each vehicle will be available for sale during the test drive program. If an evaluator does not purchase the test vehicle at the end of the test drive program within the period of use, the vehicle may be placed with another evaluator within the test drive program.

Any remaining unsold test drive program vehicles at the end of the test drive program may be made available for sale (at a discount) to the general public in the United States. Once the test drive program has been completed, the vehicles will be shipped out of the State of Tennessee unless the in-state evaluator wishes to purchase the vehicle in the

state. In the event the vehicle is sold in the State of Tennessee, the taxpayer will collect all applicable sales and use tax and remit the tax to the state. During the test drive program, employees of the taxpayer may use a few of the test drive vehicles for self-use.

### **QUESTIONS PRESENTED**

1. Is the use of the vehicles by the taxpayer in the test drive program exempt from sales and use tax in Tennessee?
2. Can the taxpayer attach dealer plates to the vehicles used in the test drive program?

### **RULINGS**

1. If the motor vehicles are used as outlined in the facts presented above, and the total use of each motor vehicle by all evaluators and employees of the taxpayer does not exceed 120 days, no tax is due.
2. This question is not a request for a tax ruling and does not pertain to any subject matter administered by the Commissioner of Revenue; therefore, this portion of the ruling request does not fall within the scope of rulings the Commissioner is authorized to issue under T.C.A. §67-1-109.

### **ANALYSIS**

1. The withdrawal of property from inventory for use for demonstration purposes is the subject of T.C.A. § 67-6-305, which states

There is also exempt from sales or use tax the transfer, by any dealer in personal property, of any item from inventory to be used by such dealer, or the dealer's agent, or representative for demonstration or display purposes; provided, that such article of personal property shall be returned to inventory for sale in the usual course of trade within one hundred twenty (120) days; if such article of personal property is used for demonstration purposes for a period in excess of one hundred twenty (120) days, the dealer shall pay a use tax thereon for the amount that the cost of the article to the dealer exceeds the sales price of the article upon which sales tax is regularly assessed and paid when it is subsequently sold to a consumer.

Further guidance is found in the sales tax regulations. TENN. COMP. R. & REGS. 1320-5-1-.03(5) states

A dealer using an automobile or other property for demonstration purposes is not required to pay Use Tax on property so used, providing it is returned to inventory within one hundred twenty (120) days. Use Tax liability will be incurred by a dealer who uses an automobile or other personal property for demonstration purposes more than one hundred twenty (120) days if, when sold, the price of the property is less than the dealer's cost. The Use Tax will be due on the amount by which the dealer's cost exceeds the selling price.

In applying the quoted statute and regulation, it appears that the use of the vehicles in the test drive program falls squarely within the exemption. There is no doubt that the taxpayer is a dealer. See T.C.A. § 67-6-102(6). The use of the vehicle is clearly to demonstrate a product to potential customers, by allowing the potential customer a test drive period. This no doubt constitutes “demonstration purposes” as contemplated in the statute. The slight use by the taxpayer’s employees, described in the ruling request as “self-use,” would still be for “demonstration or display purposes” and thus would also be specifically exempt under the statute. The test drive program is limited to one hundred twenty (120) days<sup>1</sup>, the maximum time period under which no tax is due on property used for demonstration or display purposes. The vehicles are either sold or made available for sale (“returned to inventory”) before the expiration of the time limit for tax-free use of demonstration property. Therefore, the taxpayer’s use of the vehicles as described in the facts presented does not trigger a sales or use tax liability, provided the total use of each motor vehicle by all evaluators and employees of the taxpayer does not exceed 120 days.<sup>2</sup>

2. The issuance of motor vehicle registration plates is provided for under T.C.A. Title 55. While the issuance of such plates was once administered by the Department of Revenue, the Motor Vehicle Division and the responsibility for the administration of motor vehicle registration were transferred to the Department of Safety by Executive Order No. 37 (June 29, 1990). Therefore, this question is not related to the laws administered by the Commissioner of Revenue, and this part of the ruling request does not fall within the scope of rulings that the Commissioner is authorized to issue under T.C.A. § 67-1-109.

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<sup>1</sup> The facts presented in the ruling request specify that a vehicle that is not purchased by the evaluator may be placed with another evaluator. Since the statute provides for possible tax if the “article of personal property” is used for demonstration purposes for a period in excess of one hundred twenty (120) days, the time period during which a vehicle may be used tax-free applies to each vehicle. If the total use of a vehicle by all evaluators and employees of the taxpayer is for a period of more than one hundred twenty (120) days, a tax liability will be incurred, if, when the vehicle is sold, the sales price is less than the taxpayer’s cost.

<sup>2</sup> The taxpayer’s subsequent sale of a vehicle in Tennessee is subject to tax. The facts presented in the ruling request indicate the taxpayer acknowledges such potential liability.

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APPROVED BY: Ruth E. Johnson, Commissioner

DATE: 2-6-98